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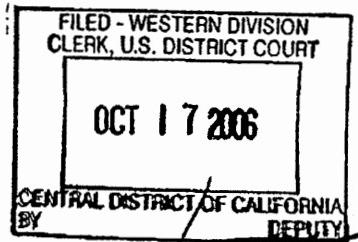
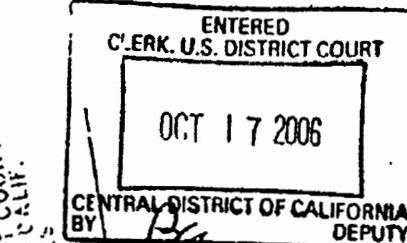
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S-CASED

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PHILIP MORRIS USA INC.,

Case No.: CV06-0587 CAS (SHx)

Plaintiff,

v.

51ST PRODUCE, INC., et al.,

Defendants.

[PROPOSED] DEFAULT JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANT BITCHET CHEY, INDIVIDUALLY AND DOING BUSINESS AS DONUT HUT

Hearing Date: October 16, 2006

Time: 10:00 a.m.

Courtroom: 5

Honorable Christina A. Snyder

Plaintiff Philip Morris USA Inc. ("Philip Morris USA"), having properly served a Summons and Complaint upon Defendant Bitchet Chey, individually and doing business as Donut Hut ("Defendant"), and Defendant having failed to timely respond to the complaint, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

1. This is an action for: (i) infringement of registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the

(469)

1 Lanham Act, 15 U.S.C. § 1125(a); and (iii) unfair competition and trademark
 2 infringement in violation of the common law of the State of California. This Court
 3 has personal jurisdiction over Philip Morris USA and Defendant, and subject matter
 4 jurisdiction of the matter in controversy between Philip Morris USA and Defendant.
 5 Venue in this judicial district is proper.

6 2. Defendant has not made any objections regarding the sufficiency of
 7 process or the sufficiency of service of process in this action. Any objections the
 8 Defendant may have regarding the sufficiency of process or the sufficiency of service
 9 of process in this action are hereby deemed waived.

10 3. Philip Morris USA manufactures cigarettes, including the famous
 11 MARLBORO® brand, for sale in the United States. Philip Morris USA is the
 12 registered owner of the following MARLBORO® and MARLBORO®-related
 13 trademarks on the Principal Register of the United States Patent and Trademark
 14 Office, all of which are valid, subsisting and incontestable pursuant to 15 U.S.C.
 15 § 1065 (collectively “Philip Morris USA Marks”):

Registration Number	Registration Date	Trademark
68,502	April 14, 1908	MARLBORO
938,510	July 25, 1972	MARLBORO Red Label
1,039,412	May 11, 1976	MARLBORO LIGHTS
1,039,413	May 11, 1976	MARLBORO LIGHTS Label

24
 25 4. Philip Morris USA has spent substantial time, effort, and money
 26 advertising and promoting the Philip Morris USA Marks throughout the United
 27 States, and these marks have consequently developed significant goodwill, have
 28 become distinctive, and have acquired secondary meaning. As a result of the sale of

1 counterfeit MARLBORO® and/or MARLBORO LIGHTS® cigarettes, Philip Morris
2 USA is suffering a loss of the enormous goodwill associated with the Philip Morris
3 USA Marks, and is losing profits from lost sales of genuine products.

4 5. Beginning on or about April 28, 2005, and subsequent to Philip Morris
5 USA's adoption and first use of the Philip Morris USA Marks, Defendant offered for
6 sale and sold to the general public counterfeit MARLBORO® and/or MARLBORO
7 LIGHTS® brand cigarettes.

8 6. Philip Morris USA filed the Complaint in this action on January 31,
9 2006.

10 7. Defendant was served with the Summons and Complaint on February 9,
11 2006. Entry of Default against Defendant was recorded on May 11, 2006, for
12 Defendant's failure to timely respond to Plaintiff's complaint. On September 22,
13 2006, Plaintiff presented this Court with its Application for Default Judgment against
14 Defendant. Defendant has not filed any opposition to this application.

15 8. Accordingly, it is hereby **ORDERED** that Defendant, and Defendant's
16 officers, agents, servants, employees, and attorneys, and all persons in active concert
17 or participation with Defendant, are hereby **PERMANENTLY ENJOINED** from

18 (i) purchasing, selling, offering for sale, or otherwise using in commerce
19 any counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand
20 cigarettes; and

21 (ii) assisting, aiding or abetting any other person or entity in purchasing,
22 selling, offering for sale, or otherwise using in commerce any
23 counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand
24 cigarettes.

25 (iii) interfering with or impeding in any way the inspections authorized by
26 paragraph 9 of this Order.

27 9. **IT IS FURTHER ORDERED THAT** the Defendant cooperate in good
28 faith with Philip Morris USA in future investigations of counterfeit cigarette sales at

1 their retail establishments, including but not limited to (a) permitting representatives
2 of an investigative firm under contract with Philip Morris USA to conduct
3 inspections, without notice, of Defendant's inventory of cigarettes to determine
4 whether any cigarettes bearing the MARLBORO® and/or MARLBORO LIGHTS®
5 trademarks are counterfeit (such inspections may proceed at any Defendant retail
6 outlet between the hours of 9:00 a.m. and 5 p.m. on any day such Defendant is open
7 for business) and to retain possession of any such MARLBORO® and/or
8 MARLBORO LIGHTS® brand cigarettes determined to be counterfeit;
9 (b) responding to reasonable requests for information about Defendant's suppliers of
10 MARLBORO® and/or MARLBORO LIGHTS® cigarettes; and (c) cooperating with
11 Philip Morris USA's representatives in their investigations of any suppliers of
12 MARLBORO® and/or MARLBORO LIGHTS® cigarettes.

13 **10. IT IS FURTHER ORDERED THAT**, pursuant to 15 U.S.C.
14 § 1117(c), Defendant is liable to Plaintiff in the amount of \$2,000 for violations of
15 Sections 32 and 43(a) of the Lanham Act.

16 **11. IT IS FURTHER ORDERED THAT** Defendant is liable to Plaintiff
17 for attorneys' fees in the amount of \$400 and costs in the amount of \$69.81.

18 **12. The terms of this Default Judgment and Permanent Injunction shall be**
19 **enforceable against Defendant, Defendant's successors in interest and assigns, and**
20 **any persons or business entities working in concert with Defendant.**

21 **13. There being no just reason for delay, the entry of this default judgment**
22 **by the United States District Court constitutes entry of final judgment as to all**
23 **remaining claims asserted in this action by Philip Morris USA against Defendant**
24 **pursuant to Federal Rule of Civil Procedure 54(b).**

25 **13. The Court shall retain jurisdiction to enforce this Default Judgment and**
26 **Permanent Injunction. If Defendant shall be alleged to have breached the terms of**
27 **this Default Judgment and Permanent Injunction, Philip Morris USA shall have the**
28 **right to reopen this matter upon motion filed and heard on an expedited basis,**

1 including by *ex parte* application. If this matter is so reopened, Philip Morris USA
2 may pursue any and all remedies it may have against the Defendant and shall also be
3 entitled to recover its attorneys' fees and costs for any further prosecution of this
4 action.

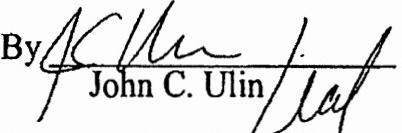
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6 IT IS SO ORDERED

7
8 DATED: October 16, 2006

Christina A. Snyder

9 Hon. Christina A. Snyder

10
11 Submitted by:
12 HELLER EHRLMAN LLP
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18 By 
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